

From: Casso, Ruben [Casso.Ruben@epa.gov]
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To: Feldman, Michael [Feldman.Michael@epa.gov]; Huser, Jennifer [Huser.Jennifer@epa.gov]
Subject: Inside EPA: EPA proposes to strengthen Texas SO2 trading program

EPA proposes to strengthen Texas SO2 trading program

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EPA is proposing to add an “assurance” mechanism to backstop emissions limits under a controversial Texas sulfur dioxide (SO2) emissions trading program, as part of the state’s plan to comply with haze reduction requirements.

In a Nov. 14 *Federal Register* notice, EPA announces its supplemental proposal that would modify its August 2018 proposal to approve the Texas-only trading program, which EPA and the state established jointly in a Federal Implementation Plan (FIP) that serves as an alternative to traditional haze controls. The program allows trading of SO2 allowances between Texas power plants, as an alternative to the “best available retrofit technology” (BART) that would otherwise be required at each individual plant.

While the Texas SO2 program has similarities with EPA’s interstate trading program for SO2 under the Cross-State Air Pollution Rule (CSAPR), it lacks “assurance provisions” that CSAPR uses to ensure that emissions do not exceed the required level in any given year, EPA says in the notice. The agency therefore proposes to set a first-time assurance level, which if exceeded would require power plants relying on SO2 allowances to obtain those allowances at a three-to-one ratio to more than offset their emissions.

EPA says its proposal stems from criticism of the Texas plan, which came under fire from environmentalists who say it falls short of the stringency required by the Clean Air Act’s BART requirements. Opponents also said the plan allows excess SO2 emissions that are harmful to health and contribute to regional haze.

The agency in the *Register* notice says it recognizes that, “the potential use of banked allowances” and allowances allocated from a “Supplemental Allowance Pool could result in potentially significant year-to-year variability in emissions.”

Therefore EPA proposes to set a statewide assurance level of 255,081 tons per year, higher than the annual state emissions cap of 238,393 tons per year.

EPA also proposes to make some other technical adjustments, including removing a provision that allows plants to opt-in to the trading program, which the agency says could increase the total level of emissions.

But otherwise, EPA proposes to stick to its overall conclusion that the program is a suitable alternative for BART, and to affirm the Texas haze FIP.

EPA is taking public comment on the supplemental proposal through Jan. 13.

Meanwhile, litigation brought by environmentalists over the 2017 Texas haze FIP is currently in abeyance in the U.S. Court of Appeals for the 5th Circuit, in *National Parks Conservation Association, et al. v. EPA, et al.*, pending EPA’s reconsideration of the plan that now includes the introduction of assurance provisions.